

through 405.830. A waiver of the right to appear is to be in writing and filed with the hearing officer or the carrier. Such waiver may be withdrawn by a party at any time prior to the mailing of notice of the decision in the case. Even though all of the parties have filed a waiver of the right to appear and present evidence and contentions at a hearing before the hearing officer, the hearing officer may, nevertheless, give notice of a time and place and conduct a hearing as provided in §§ 405.825 through 405.830, if he believes that the personal appearance and testimony of the party or parties would assist him to ascertain the facts at issue in the case. For purposes of this section, failure of the parties to appear shall not be cause for a finding of abandonment and the hearing officer shall make his decision on the basis of all evidence adduced.

[32 FR 18028, Dec. 16, 1967. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 62 FR 25855, May 12, 1997]

§ 405.832 Dismissal of request for carrier hearing.

(a) *By application of party.* With the approval of the hearing officer, a request for a hearing may be withdrawn or dismissed at any time prior to the mailing of notice of the decision upon the application of the party or parties filing the request for such hearing. A party may request a dismissal by filing a written notice of such request with the carrier, the hearing officer or orally stating such request at the hearing. The dismissal of a request for hearing shall be binding unless vacated (see paragraph (d) of this section).

(b) *Dismissal by abandonment of party.* A hearing officer may dismiss a request for hearing upon abandonment by the party or parties who filed the request. A party shall be deemed to have abandoned a request for hearing, other than where personal appearance is waived in accordance with § 405.831, if neither the party nor his representative appears at the time and place fixed for the hearing and within 10 days after the mailing of a notice to him by the hearing officer to show cause, such party does not show good and sufficient cause for such failure to appear and failure to notify the hearing officer prior to the time

fixed for hearing that he cannot appear.

(c) *Dismissal for cause.* The hearing officer may, on his own motion, dismiss a hearing request, either entirely or as to any stated issue, under either of the following circumstances:

(1) Where the party requesting a hearing is not a proper party under § 405.822 or does not otherwise have a right to a hearing under section 1842(b)(3)(C) of the Act; or

(2) Where the party who filed the hearing request dies and there is no information before the hearing officer showing that an individual who is not a party may be prejudiced by the carrier's determination.

(d) *Dismissal without prejudice.* The hearing officer may on his own motion dismiss without prejudice a hearing request where the amount in controversy is less than \$100.

(e) *Vacation of dismissal.* A hearing officer may, on request of a party and for good and sufficient cause shown, vacate any dismissal of a request for hearing at any time within 6 months from the date of mailing notice of the dismissal to the party requesting the hearing at his last known address.

[32 FR 18028, Dec. 16, 1967, as amended at 39 FR 12098, Apr. 3, 1974. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 59 FR 12183, Mar. 16, 1994; 62 FR 25855, May 12, 1997]

§ 405.833 Record of carrier hearing.

A complete record of the proceedings at the carrier hearing is made. The testimony is transcribed and copies of other documentary evidence are reproduced in any case when directed by the hearing officer, the carrier, or CMS. The record will also be transcribed and reproduced at the request of any party to the hearing provided the requesting party bears the cost.

[62 FR 25853, May 12, 1997]

§ 405.834 Carrier hearing officer's decision.

(a) As soon as practicable after the close of a carrier hearing, the carrier hearing officer issues a decision in the case based upon the evidence presented at the hearing or otherwise included in the hearing record. The decision is issued as a written notice to the parties and contains—

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- (1) Findings of fact,
- (2) A statement of reasons, and
- (3) Notification to the parties of their right to an ALJ hearing when the amount remaining in controversy is at least \$500.

(b) A copy of the decision is mailed to the parties to the hearing at their last known addresses.

[62 FR 25854, May 12, 1997]

§ 405.835 Effect of carrier hearing officer's decision.

The carrier hearing officer's decision is binding upon all parties to the hearing unless—

(a) A request for an ALJ hearing is filed in accordance with § 405.855, or

(b) The decision is revised in accordance with § 405.841.

[62 FR 25854, May 12, 1997]

§ 405.836 Authority of the carrier hearing officer.

The carrier hearing officer, in adjudicating Medicare Part B claims, complies with all of the provisions of, and regulations issued under, title XVIII of the Act, as well as with CMS Rulings, national coverage decisions, and other policy statements, instructions, and guides issued by CMS.

[62 FR 25854, May 12, 1997]

§ 405.841 Reopening initial or review determination of the carrier, and decision of a carrier hearing officer.

An initial or review determination of a carrier or a decision of a hearing officer may be reopened by such carrier or hearing officer:

(a) Within 12 months from the date of the notice of such initial or review determination or decision to the party to such determination or decision; or

(b) After such 12-month period, but within 4 years from the date of the notice of the initial determination to the party to such determination, upon establishment of good cause for reopening such determination or decision (see 20 CFR 404.988(b) and 404.989); or

(c) At any time, when:

(1) Such initial or review determination or decision was procured by fraud or similar fault of the beneficiary or some other person, or

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(2) Such initial or review determination or decision is unfavorable, in whole or in part, to the party thereto, but only for the purpose of correcting a clerical error or error on the face of the evidence on which such determination or decision was based.

[39 FR 12098, Apr. 3, 1974. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 59 FR 12183, Mar. 16, 1994; 62 FR 25855, May 12, 1997]

§ 405.842 Notice of reopening and revision.

(a) *Notice.* When any determination or decision is reopened as provided in § 405.841, notice of such reopening shall be mailed to the parties to such determination or decision at their last known addresses. A notice of revision following a reopening of a decision, shall be mailed to the parties and shall state the basis for the revised determination or decision.

(b) *Effect of revised determination.* The revision of a determination (see § 405.841) shall be binding upon all parties thereto unless a party files a written request for a hearing with respect to a revised determination when the amount in controversy is \$100 or more.

[32 FR 18028, Dec. 16, 1967, as amended at 39 FR 12098, Apr. 3, 1974. Redesignated at 42 FR 52826, Sept. 30, 1977; 62 FR 25855, May 12, 1997]

§ 405.850 Change of ruling or legal precedent.

Change of a legal interpretation or administrative ruling upon which a determination or decision was made shall not be considered as good and sufficient reason for reopening the determination or decision.

§ 405.853 Expedited appeals process.

(a) *Conditions for use of expedited appeals process (EAP).* A party may use the EAP set forth in § 405.718 of this chapter to request court review in place of the ALJ hearing or Departmental Appeals Board (DAB) review if the following conditions are met:

(1) The carrier hearing officer has made a decision; an ALJ has made a hearing decision; or DAB review has been requested, but a final decision has not been issued.

(2) The filing entity is a party referred to in § 405.718(d) of this chapter.